

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**CRIMINAL ACTION NO. 3:13-CR-23-06
(JUDGE GROH)**

ADAM NICOLAS BRADY,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION THAT DEFENDANT'S
MOTION TO SUPPRESS BE DENIED**

On this day, the above-styled matter came before the Court for consideration of the report and recommendation of United States Magistrate Judge James E. Seibert. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation. Magistrate Judge Seibert filed his report and recommendation on October 15, 2013. In that filing, the magistrate judge recommended that this Court deny Defendant's Motion to Suppress a Suggestive Photographic Identification [Doc. 136].

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the defendant's right to appeal this Court's Order. **28 U.S.C. § 636(b)(1)**; ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Judge Seibert ordered the parties to file written objections, if any, by October 16, 2013 at 5:00 p.m. EST. He explained that failure to timely file objections to the report and recommendation would result in a waiver of the right to appeal from a judgment of this Court based upon the Order. The parties did not file any objections to Judge Seibert's report and recommendation. Accordingly, this Court will review the report and recommendation for clear error.

On September 18, 2013, Defendant filed a Motion to Suppress Photographic Identification. Defendant argued that, due to an impermissible and suggestive photographic identification by a confidential information, any subsequent in-court identification is "tainted and improperly suggestive." Therefore, the Court should suppress any subsequent in-court identification. However, Judge Seibert denied Defendant's Motion to Suppress because "even though the use of a single photograph was unduly suggestive, a subsequent identification by [a] [c]onfidential [i]nformant . . . would be sufficiently reliable based on the totality of the circumstances." Upon reviewing the Defendant's motion and Judge Seibert's report and recommendation, this Court does not find clear error.

Therefore, it is the opinion of this Court that the magistrate judge's **Report and Recommendation [Doc. 214]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DENIES** Defendant's Motion to Suppress Photographic Identification. [Doc. 136].

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record.

DATED: October 17, 2013

A handwritten signature in blue ink, appearing to read "Gina M. Groh", is written over a horizontal line.

GINA M. GROH
UNITED STATES DISTRICT JUDGE